

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

IN RE: §  
§  
DENNIS RAY SATTERFIELD and §  
RHONDA KAY SATTERFIELD, §  
Debtors. §  
§  
§ CASE NO. 01-45456-DML-13

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FAIRBANKS CAPITAL CORP., as §  
Attorney in fact and Servicer in fact for §  
TRUMAN CAPITAL ADVISORS, §  
Movant, §  
§  
§  
vs. §  
§  
DENNIS RAY SATTERFIELD and §  
RHONDA KAY SATTERFIELD, §  
Debtors. §  
§ ADV. NO. 01-4164

**MEMORANDUM ORDER**

Before the court is the motion for relief from stay (the "Motion") filed by Fairbanks Capital Corp. ("Fairbanks") with respect to 1909 Wickersham, Arlington, Texas (the "Property"). The court heard the Motion on July 24, 2003, and this Memorandum Order embodies the court's findings of fact and conclusions of law.

During the hearing, Debtor Rhonda Kay Satterfield (individually, "Mrs. Satterfield") testified, and Ginger Gamez ("Gamez"), a representative of Fairbanks, testified. The parties also entered numerous exhibits into evidence.

The question before the court is whether Fairbanks has satisfied its burden of showing it holds an obligation secured by a lien on the property. If Fairbanks has not shown, by a preponderance of the evidence, that such an obligation exists, Fairbanks will

**not have proven itself to have an interest entitled to adequate protection, *see* 11 U.S.C. §§ 361 and 362, nor will Fairbanks have shown an absence of equity in the property. *Id.* § 362(g). If Fairbanks is not entitled to adequate protection and has not shown an absence of equity in the Property, the Motion must be denied. *Id.* § 362(d). The issues presented to the court are thus essentially factual.**

**Dennis Ray Satterfield and Mrs. Satterfield (collectively, "Debtors") have owned the Property for many years. Debtors also own other residential property which is their homestead. In 1998 Debtors refinanced their homestead with a predecessor in interest to Fairbanks. Mrs. Satterfield testified that part of the proceeds were used to pay off the lien on the Property.**

**Nevertheless, approximately 18 months later, Fairbanks' predecessor recorded a deed of trust pertaining to the Property. At the hearing, Fairbanks placed in evidence the deed of trust and various other documents to show the existence of an obligation secured by the Property. Mrs. Satterfield admitted that some of these documents bore her signature and that of her husband.**

**However, a number of the documents contained irregularities. For example, Fairbanks had no explanation for the duplicate Transfer of Servicing Disclosure Statements (Fairbanks' Ex. 13 and 14) or for discrepancies among the documents in the amount of the purported obligation. Mrs. Satterfield testified that some of the signatures on the documents were not hers or her husband's and that one document (Fairbanks' Ex. 34) could not have been signed by her or her husband on the notarized date because they were in Nevada at the time.**

As to valid signatures, for example, the deed of trust on the Property (Fairbanks' Ex. 1), Mrs. Satterfield stated that she and her husband did not fully review the documents presented to them at the closing on their refinancing. Rather, Mrs. Satterfield testified that she and her husband signed what was placed before them and were unaware some of the documents referred to the Property.

Gamez's testimony was based on those documents in Fairbanks' files. Gamez had no personal knowledge concerning the circumstances surrounding execution of the documents at the time of the refinancing. Although Gamez produced no note secured by the Property, Gamez testified that she assumed the note existed based on the documents in Fairbanks' files. Fairbanks apparently did not ask its predecessor in interest to produce a note or proof a note once existed.

The court has reviewed the exhibits. Though the court has no expertise in handwriting analysis, there is sufficient difference among the signatures for the court to accept Mrs. Satterfield's testimony regarding their problematic validity. While the court recognizes that Debtors' failure to review the documents before signing them at the time of the refinancing cannot relieve Debtors of the effect of those documents, there is no reason to doubt Mrs. Satterfield's testimony that the documents were so carelessly handled. If that does not invalidate what was signed, neither does it require the court to infer from other documents the existence of a note Fairbanks could not produce at the hearing. Moreover, the discrepancies in the documents, the delay in recording Fairbanks' Ex. 1, and the apparent fraudulent signatures on some documents militate against any such inference.

On the facts before it, the court cannot find by a preponderance of the evidence that Fairbanks holds an obligation secured by the Property. Accordingly the Motion must be denied.

Debtors have asked that the court award them attorneys' fees in connection with the Motion. The disposition of the Motion does not result in avoidance of Fairbanks' lien against the Property (*see* FED. R. BANKR. P. 7001), and Debtors will likely undertake further proceedings respecting Fairbanks. The court will defer consideration of fees until that time.

Finally, the court had directed that the chief financial officer of Fairbanks appear at the hearing. Neither counsel for Fairbanks nor Gamez admitted knowing who was the chief financial officer of Fairbanks, but Fairbanks ignored the court's order by failing to produce that individual. Fairbanks is therefore in contempt of court. Because, *inter alia*, the source of the problems presented in this case may be Fairbanks' predecessor in interest, the court will consider any sanctions for Fairbanks' contempt when the court determines what, if any, attorneys' fees are due Debtors.

It is so ORDERED.

Signed this 1<sup>st</sup> day of September, 2003.

  
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DENNIS MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE